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TESTIMONY FROM MICHAEL GUARINO ON BEHALF OF THE AMBULATORY SURGERY CENTER ASSOCIATION SEPTEMBER 9, 2011 WAYS AND MEANS SUBCOMMITTEE ON HEALTH

Chairman Herger and Ranking Member Stark, good morning and thank you for inviting me to testify at the Ways and Means Health Subcommittee's hearing on health care consolidation.

My name is Michael Guarino, and I am from Weeki Wachee, Florida. I manage the operations of five ambulatory surgery centers (ASCs) in New York and Florida. I am testifying on behalf of the Ambulatory Surgery Center Association, for which I serve as a board member. I have worked for more than 15 years in the management of ASC and physician practices, and I manage both single- and multi-specialty ASCs under a number of different financial arrangements.

I commend you for convening this hearing to explore the impact of consolidation in the health care industry, as I believe this phenomenon has increased recently and may

raise overall health care costs. In theory, consolidation may bring efficiencies to the market by reducing excess capacity and duplication. However, I have seen first-hand that consolidation can also be anti-competitive and may result in virtual monopolies in certain markets where patients are funneled into higher cost settings.

Ambulatory Surgery Centers (ASCs) are health care facilities that specialize in providing essential surgical and preventive services in an outpatient setting. ASCs have transformed the outpatient experience for millions of Americans by offering a convenient, personalized, lower-priced alternative to hospitals. With approximately 5,300 Medicare-certified facilities across all 50 states, ASCs perform more than 25 million procedures each year, which constitutes nearly 40 percent of all outpatient surgeries nationwide. We remain a major component of the health care continuum and an essential point of access for important preventive procedures, such as colonoscopies that detect colon cancer, and cataract surgeries that repair eyesight. As such, we are dedicated to providing high quality care to our patients at an affordable cost, as well as to private and public payers.

As you may know, Medicare now pays ASCs about 56 percent on average of the hospital outpatient department (HOPD) payment rate for providing *identical* services. For instance, a hospital receives $2,042 in reimbursement

when a knee scope procedure is performed while an ASC would receive $1,167next year for the same service.

Medicare and its beneficiaries can achieve substantial savings in ASCs

HCPCS	Description	Patient Copayment		Total Procedure Cost	
		ASC	HOPD	ASC	HOPD
66984	Cataract surg w/iol, 1 stage	$190.57	$488.94	$952.83	$1,667.18
43239	Upper gi endoscopy, biopsy	$66.49	$136.33	$332.43	$581.65
45378	Diagnostic colonoscopy	$73.94	$186.06	$369.70	$646.88
45380	Colonoscopy and biopsy	$73.94	$186.06	$369.70	$646.88
45385	Lesion removal colonoscopy	$73.94	$186.06	$369.70	$646.88
66821	After cataract laser surgery	$44.28	$104.31	$221.39	$387.37
64483	Inj foramen epidural l/s	$59.89	$104.80	$299.46	$523.98
66982	Cataract surgery, complex	$190.57	$488.94	$952.83	$1,667.18
45384	Lesion remove colonoscopy	$73.94	$186.06	$369.70	$646.88
29881	Knee arthroscopy	$233.47	$408.52	$1,167.37	$2,042.58
63650	Implant neuroelectrodes	$701.35	$871.77	$3,506.75	$4,358.81
29827	Arthroscop rotator cuff repr	$384.49	$804.74	$1,922.43	$3,363.71

* 2012 proposed payment rates.

This means ASCs are an enormous source of savings for the Medicare program—cutting costs for the program by approximately $2.55 billion a year. We stand ready to work with the Ways and Means Committee and Congress to reduce Medicare outpatient surgery costs even further. For example, if just 50 percent of the cases performed in an HOPD, that are eligible to be performed at an ASC, were transitioned to an ASC setting, Medicare would save an additional $20 billion over 10 years.

But there is a flip side to the growing disparity in the payments that ASCs and hospitals receive. Just eight

years ago, ASCs were paid 86 percent of the HOPD rate. As that number has slipped to 56 percent, there is now a growing payment incentive to treat these patients in the HOPD rather than the more economical ASC setting. Indeed, we are now starting to see a number of hospitals acquiring ASCs and converting them into HOPDs. A recent analysis conducted by our Association found that of 179 ASC closures since 2009, about one-third were a result of purchase by a hospital. Further, our research shows that almost 40 percent of the facilities that have closed this calendar year have been purchased by a hospital. The result is that Medicare will pay substantially more for its beneficiaries to receive identical services. While not all of these acquisitions lead to an ASC conversion to a HOPD (20% of the ASC marketplace is a joint venture involving a hospital where the ASC retains its ASC designation), the trend raises serious concerns.

My own experience may also be illuminating. I have been approached by a hospital or hospital system to sell my ASC in every market in which I operate. One hospital system presented an economic analysis showing that one ASC could increase its annual revenue by $4 million to $6 million simply by allowing the hospital to acquire the ASC. This revenue increase would occur only because we would be paid more by Medicare and commercial insurance for the same cases.

In another market, the vice president of operations of a major hospital system suggested that I either allow him to purchase my single specialty surgery center or watch as my surgery center became worthless when the non-profit hospital system became an accountable care organization. That hospital system has started to acquire other outpatient surgery centers and physician practices in the community.

In my New York market, all three local hospital systems (the non-profit catholic system, the state run hospital system, and the non-profit Jewish hospital system) have contacted me about acquiring the outpatient surgery center. In addition, virtually all of my referring doctors were approached by a hospital system to enter into management agreements that effectively prohibit physicians from referring cases to any facility not affiliated with their hospital system.

Similarly, a January 2011 Certificate of Need application by Hartford Hospital for the acquisition of Constitution Eye Surgery Center, LLC, as ASC, noted that under the ownership of Hartford Hospital, the surgery center is expected to produce incremental operating gains of $5 million in 2011, which would rise to $7 million in 2012 and every year thereafter.

What will be the impact on Medicare when these acquisitions occur? The answer is that beneficiaries will

pay substantially higher copayments for their outpatient surgical procedures. For example, a beneficiary's copay for cataract surgery would soar from $191 if she received that procedure at an ASC to $489 if the same service were, instead, provided in the hospital outpatient department. Similarly, the price Medicare would pay for a colonoscopy and biopsy would nearly double from $370 to $647.

The acquisition of ASCs also reflects a broader trend of hospital acquisition across many aspects of the healthcare community, including physician practices, labs and other ancillary services. Between 2005 and 2008, the percentage of medical practices owned by hospitals has soared from 25.6 percent to 49.5 percent, according to the Medical Group Management Association's 2008 Physician Compensation survey. More recently, this physician merger activity has accelerated. According to a report from Irving Levin Associates, physician practice merger activity has increased by 200 percent from the second quarter of 2010 to the second quarter of 2011. This consolidation may limit competition in particular geographic areas, potentially increasing costs to employers and insurers, as hospital-based procedures are often priced higher than those performed in a physician office.

What should be done about this phenomenon?

Obviously, the certificate of need process is controlled at the state level. But as fiduciaries for the taxpayers and Medicare beneficiaries, Congress has the obligation to ensure that Medicare policy and health policy effective in the private sector provides the proper incentives to provide high quality health care at the most economical price.

The ASC industry stands ready to work with Congress and CMS to ensure a better alignment of incentives for care is rendered in the most efficient, cost effective and highest quality setting. Among the key areas that should be addressed are:

- Implementation of transparent quality and cost-sharing reporting across settings which will give all patients access to the information they need to make informed decisions about the quality and cost of their care.

- Ensure that ASC payments updates keep pace with updates for the same services provided in hospitals. Section 2 of the Ambulatory Surgery Center Quality and Access Act of 2011 (H.R. 2108), would tie future ASC updates to the hospital market basket—the measure currently used to update HOPD rates. ASC inflationary challenges of hiring and retaining nurses and purchasing medical supplies are similar to hospitals. Those costs are not reflected in the Consumer Price Index for All Urban Consumers (CPI-U) -- the measure currently used for ASC updates. The CPI-U measures price changes for items like energy, housing and food. Applying the hospital market basket would arrest the widening delta between the ASC and HOPD rates and signal to the health care market that the ASCs can remain viable alternatives for patients.

- Finally, Congress should provide vigorous oversight of accountable care organizations (ACOs) to ensure ACOs do not impede competition, lead to higher costs or inhibit patient choice of care setting. While ACOs have the potential to better coordinate care, safeguards are needed to ensure that the model does not simply become a catalyst for greater consolidation and monopolization in health care markets.

Conclusion

Once again, thank you for inviting me to participate in the hearing. It is critical to protect patient access to the high quality, cost-effective services provided by Ambulatory Surgery Centers. We appreciate your interest in ensuring this is the case. The ASC industry looks forward to working with the Committee and Congress to lower overall health care costs while improving patient outcomes.